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Federal Public Ministry

State Attorney's Office in Paraná

EXCELLENT MISSION OF FEDERAL JUDGE OF THE 13th FEDERAL COURT OF THE SUBSECTION

JUDICIARY OF CURITIBA - PARANÁ.

Case No. 5055362-06.2017.4.04.7000

EPROC Classification: No confidentiality

Classification in SINGLE: Normal

Author: Federal Public Ministry

Accused: David Muino Suarez

THE **FEDERAL PUBLIC MINISTRY** , through the Attorneys of the Republic which subscribe, with focus on article 403, § 3, of the CPP, comes, in attention to the decision issued in

event 288, present your **FINAL CLAIMS** , as set out below.

1. REPORT

This is an unconditional public criminal action instituted based on the offer of complaint by the **FEDERAL PUBLIC MINISTRY** in the face of the accused **DAVID MUINO SUAREZ** , for the crime of money laundering, capitulated in article 1, caput, c / c § 4 of Law no. 9,613 / 98, for 3 (three) times, in a material contest (art. 69), in the form of art. 29 of the Penal Code.

According to the complaint, **DAVID MUINO SUAREZ** , a native of Spain, working in the as account manager at BSI bank, Zurich branch, Switzerland, brokered the constitution *offshore* companies at the Panamanian office MOSSACK FONSECA, and successively promoted the opening of bank accounts at that financial institution securitized by **ACONA INTERNATIONAL INVESTMENTS** (account number Z203217), **SANDFIELD CONSULTING** (account number Z212669AA) and **STINGDALE HOLDINGS** (account number 71055026), accounts in which values from corruption crimes carried out in the face of Petrobras were carried over.

As reported, the accused falsely justified the bank's *compliance* sector criminal financial transactions, giving a lawful appearance to bank deposits that had as their payment of tuition fees, in order to circumvent the suspicious operation alerts system (*siren alert*) of the financial institution, in addition to making joint investments and receiving “outside” values of its clients involved in corruption crimes, namely, JOÃO AUGUSTO HENRIQUES, lobbyist and financial operator; PEDRO AUGUSTO BASTOS, at the time an official public and manager of PETROBRAS international area; and IDALÉCIO DE OLIVEIRA, entrepreneur who paid bribes to obtain a contract with the Brazilian state-owned company, all already convicted in lawsuits that were processed in this Court for the crimes of corruption and money laundering.

The complaint was fully received (event 03).

The accused's criminal record certificates were gathered at events 8 and 20.

WRITTEN MEMORIES OF THE FEDERAL PUBLIC MINISTRY

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Duly cited (event 13), after the Court has granted an additional term, the accused submitted a response to the indictment (event 22), when he maintained: **a)** the inapplicability of the law

Brazilian in the present case; **b)** the incompetence of the court to judge the case, taking into account

consideration of the autonomy of the crime of money laundering, which repels prevention; **c)** as well as,

the absence of minimal probative ballast.

After analyzing the responses to the indictment, in the absence of a summary acquittal, the he proceeded regularly with the summons of the witnesses for a later hearing (event 26).

PETROBRAS requested your qualification as an assistant to the prosecution (event 36), defense presented opposition (event 67). However, the qualification remained deferred (event 73).

The witnesses were heard according to the table below:

Witnesses

Video

(event)

Transcription

(event)

Withdrawal / Dismissal

(event)

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Ricardo Pernambuco Backheuser

127

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Ricardo Pernambuco Backheuser

Junior

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Guilherme Rodolfo Laager

136

146

Ricardo Honório Neto

138

152

Renata Pereira Britto

138

152

Ananias Vieira de Andrade

138

152
**DAVID
MUINO
SUAREZ**
Álvaro de Seixas Sobral
81
Bruno Catsiamakis Queiroga
142
151
David Valletta
142
151
Luis Felipe Gebara Benedetti
158
Ricardo Galvão Álvares de Abreu
158
Roberto Guttman
167
185
Antonio Ricardo Luiz
189
192
Salvador Landau
138
Paulo de Oliveira
205
Jan Hänggi
234 - annex17
Samuel Notz
234 - annex15
Walter Fröhlich
234 - annex18
Daniela Medina Troccol
234 - annex16
Emmanuel De Kerchove
Caroline Gerster-Wick
234 - Annex 10
Renato Cohen
234 - annex19
Guilherme Pin
234 - annex20
Thomas Retsch
234 - Annex 14
Mirco Lombardi
Emanuele Stauffer
234 - annex 4
Silvana Sobral Mesquita
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The accused was questioned at event 277.

In compliance with the procedural phase provided for in article 402 of the CPP, documents for the defense of **DAVID MUINO SUAREZ** (event 282).

The case came for closing arguments (event 288).

It's the report.

2. PRELIMINARY

Firstly, despite the defensive claim that PETROBRAS OIL & GAS BV is a private company, with its own legal personality and headquartered in the Netherlands

(event 22, page 3), so that the accused would have no guile in committing the crime of money laundering

money, as he was supposedly unaware that the deal was related to Public Administration fact, the said company is a wholly owned subsidiary of the PETROBRAS holding (PETRÓLEO BRASILEIRO SA), a Brazilian mixed capital company, whose controlling interest is from the Brazilian FEDERAL UNION, that is, a semi-public company whose employees are equivalent to public servants.

It should be noted that **DAVID MUINO SUAREZ**, as a bank manager, had obligation to know about the business nature and origin of the money in the accounts of its customers (*Know your client*). From the maxims of common experience, it is not credible that a person

with such expertise in the financial market did not know at all the legal nature of the PETROBRAS and its practical consequences, especially when faced daily in Brazil with news related to government interference in relation to the state.

The mere fact that the company is listed on the stock exchange does not mean that it is a company

private sector, so that several other public and semi-public companies in the oil industry that are listed on stock exchanges.

In addition, it should be noted that the bank transactions carried out by Banco BSI were directly related to amounts arising from the acquisition contract by PETROBRAS of 50% of the exploration rights for block 4 of the Benin oil field, Africa (*farm in*).

Despite the defensive allegation that such a deal did not harm PETROBRAS, in view of the subsequent sale of these assets to SHELL (*farm out*), the defense did not take into account

that - in addition to the USD 34.5 million spent on *farm in* - PETROBRAS borne several costs that would be due by CBH and that were not duly paid by that company.

In this sense, PETROBRAS 'Internal Investigation Commission found that the company unduly paid the following costs, which were not reimbursed by CBH:

- 1) USD 9.5 million, related to the payment of CBH's past costs;
- 2) USD 25 million, related to the entry bonus in the block;
- 3) USD 14 million, referring to the load of CBH in 3D seismic costs;
- 4) USD 29 million, referring to the loading of CBH in the costs of the well.

As found, such costs imposed a loss of USD 77.5 million to PETROBRAS, since CBH went into default and did not pay the installments it owed in the Joint Venture set up to explore the well, so that this defensive thesis should not succeed.

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3. MERIT

3.1. MATERIALITY

The procedural instruction resulted in unequivocal proof of materiality and authorship crime of money laundering crimes imputed to the accused, according to abundant documentary evidence and testimonial produced.

As described in the complaint, on a date not perfectly specified in the file, but being between 11/25/2010 (date of incorporation of the *offshore* **ACONA INT'L INVESTMENTS LTD**) and 10/18/2013 (date of the last transfer made by **ACONA** , by **JOÃO AUGUSTO REZENDE HENRIQUES**, for **STINGDALE HOLDINGS**), accused **DAVID MUINO SUAREZ** , consciously and voluntarily, three times, in a material contest, hid and concealed the nature, origin, location, disposition and movement of at least USD US \$ 21,750,000.00 from crimes of active and passive corruption committed in the face of the Brazilian semi-public company **PETRÓLEO BRASILEIRO S / A - PETROBRAS**.

Investigations have shown that the amounts operationalized in bank accounts opened and managed by **DAVID MUINO SUAREZ** came directly or indirectly from crimes of active and passive corruption practiced under the acquisition contract, by the **PETROBRAS**, 50% of the exploration rights for block no. 4 of the Benin oil field, Africa. The materiality of these antecedent crimes was fully proven in the records of the Criminal proceedings n ° 5027685-35.2016.404.7000, n ° 5051606-23.2016.404.7000, and n ° 5024879-90.2017.404.7000, all already sentenced.

In those cases, the transfer of undue advantages in the amount of USD 4,865,000.00 for **PETROBRAS** 'then International Area Manager, **PEDRO AUGUSTO XAVIER**, as well as an undue advantage of USD 1.5 million in favor of the then Deputy Federal **EDUARDO CUNHA**, due to acts of corruption practiced by them in the performance of its functions. These values were operationalized by the lobbyist **JOÃO AUGUSTO REZENDE HENRIQUES**, client of **DAVID MUINO SUAREZ** and economic beneficiary of the accounts **ACONA** and **STINGDALE** , according to financial tracking promoted by the Analysis Report n° 116/2015 - **SPEA / PGR** (event 1, annex 7).

In the specific case, it was demonstrated that **DAVID MUINO SUAREZ** , extrapolating the functions of bank manager, intermediated the constitution of *offshore* companies **ACONA**

INTERNATIONAL INVESTMENTS , SANDFIELD CONSULTING and STINGDALE HOLDINGS with the Panamanian law firm MOSSACK FONSECA, worldwide known for opening shell companies to criminals around the world.

After the constitution of these *offshores* , the defendant promoted the opening of bank accounts in

BSI bank, the financial institution where he worked. Subsequently, the accused also served in the justification of operations to the *compliance* sector and the operationalization of orders and transfers,

in addition to operating joint investments with the values obtained, acting directly on the laundering of

capital arising from crimes arising from Operation Lava jato against PETROBRAS. THE procedural instruction also demonstrated that **DAVID MUINO** received values “outside” these *offshores* , by transferring amounts to an account held by him in the name of offshore **OAKLAND MANAGEMENT** , maintained in Liechtenstein, making undue and criminal profit illicit financial transactions carried out by its clients, as will be demonstrated by the follow.

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3.2. AUTHORSHIP

The accused **DAVID SUAREZ MUIÑO** was banking relationship manager accounts securitized by *offshore* **ACONA INT'L INVESTMENTS** (account No.

Z203217), **SANDFIELD**

CONSULTING SA (account No. Z212669AA) and **STINGDALE HOLDING INC** (account No.

71055026), all maintained at Banco BSI, Zurich branch, Switzerland. In all of these accounts values of criminal origin transited, negotiated in corruption deals in the contract of acquisition, by PETROBRAS, of 50% of the exploration rights of the oil field located in Benin, Africa, acquired from the company CBH, maintained by the Portuguese businessman IDALÉCIO

FROM OLIVEIRA.

DAVID MUINO SUAREZ's participation started when he intermediated with the law firm MOSSACK FONSECA the constitution of the *offshores* essential to the consummation of money laundering offenses, which is totally incompatible with their Bank manager. That is to say, in a similar situation in Brazil, it is as if the manager of a bank to ask the commercial board to open a shell company for the benefit of a client of yours, to then open a bank account in the name of that company and thus make transfers viable financial resources.

In this context, as stated in the complaint, it was apprehended at the Brazilian branch of

MOSSACK FONSECA electronic spreadsheet (event 1, annex 12) that indicates that not only the offshore companies denounced in the case file were opened at the request of the accused, but also several other offshore companies whose beneficiaries are still unknown.

Immediately thereafter, **DAVID MUIÑO** undertook to open a bank account in the name of **ACONA**

INTERNATIONAL INVESTMENTS at the Zurich branch of the BSI bank. Such account economic beneficiary the lobbyist **JOÃO AUGUSTO REZENDE HENRIQUES**, convicted of corruption and money laundering in Criminal Action No. 5027685-35.2016.4.04.7000, due to its acting as a financial operator in intermediating the payment of tuition fees in favor of **PETROBRAS** employees, such as **PEDRO AUGUSTO BASTOS**, and politicians, as the former federal deputy **EDUARDO CUNHA**.

In this regard, it was proven in the related records that **JOÃO AUGUSTO REZENDE HENRIQUES**, through this **ACONA INTERNATIONAL INVESTMENTS** account, received USD 21,750,000.00 (twenty-one million, seven hundred and fifty thousand US dollars) from **COMPAGNIE BENINOISE DES HYDROCARBURES (CBH)**, a subsidiary of the company **LUSITANIA PETROLEUM**, owned by Portuguese businessman **IDALÉCIO DE OLIVEIRA**, who had received about USD 34,500,000.00 from **PETROBRAS** due to the contract in Benin, to then pass on part of these values to public agents and politicians.

Even though he knew about the status of **PEDRO AUGUSTO BASTOS**, who was working at **PETROBRAS**, **DAVID MUINO SUAREZ** opened an account on behalf of offshore that he had as a beneficiary (as will be seen below) and allowed **JOÃO AUGUSTO HENRIQUES** transferred almost USD 5 million to his benefit.

As stated in the **ACONA INTERNATIONAL** account's bank documentation **INVESTMENTS**, forwarded by the Attorney General's Office after the transfer of the existing criminal process in Switzerland for Brazil (Official Letter No. 4559/2016 / ACRIM / SCI / PGR - event

1, annex 10), this *offshore* was incorporated / incorporated on November 25, 2010, in the Republic

Seychelles, by the law firm **MOSSACK FONSECA & CO** (event 1, annex 11), as seen above, at the request of **DAVID MUINO SUAREZ**.

After this *offshore* was effectively constituted by the Panamanian office, registered in

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orange, the accused initiated the procedure for opening account No. Z203217, securitized by **ACONA INTERNATIONAL INVESTMENTS**, as stated in the document entitled "*Application for the opening of an account / custody account*" (event 1, annex 11), by him

signed.

In this account, he was established as the economic beneficiary of that account JOÃO AUGUSTO REZENDE HENRIQUES, with authorized signatures for his wife and son. In all these documents and forms appear on stamps and rubrics by **DAVID MUINO SUAREZ** as *Account Officer* of the banking relationship. As determined in the procedural instruction, **DAVID MUINO SUAREZ** met JOÃO HENRIQUES in the second half of 2010, when he informed him that he would receive commission on a PETROBRAS business, inviting him to operationalize the case. As seen, ACONA was formed well at that time, that is, November 2010. Soon after, a bank account was created for the exclusive purpose of receiving these commissions.

In parallel, to give a legitimate appearance to transfers of undue advantages, JOÃO HENRIQUES and IDALÉCIO DE OLIVEIRA signed an ideological agency contract between ACONA INT'L INVESTMENTS and LUSITANIA PETROLEUM, whose services they were never actually rendered. This contract was presented to Banco BSI by **DAVID MUINO**

SUAREZ to justify the financial transactions carried out in the ACONA account, as contained in the *compliance* documents of that account (event 1, annex 15).

In this sense, it appears in such documentation and also in Analysis Report No. 113/2015 - SPEA / PGR (event 1, annex 16), which proceeded with the analysis of payments made abroad by

JOÃO HENRIQUES in favor of EDUARDO CUNHA, document called "*Note: Additional Clarification on transactions* ", in which **DAVID MUINO SUAREZ** and his superior

SAMUEL NOTZ justify *compliance with* the financial flow PETROBRAS> CBH> LUSITANIA> ACONA and provide information on the corporate structure of these companies:

It is noted that, as expressly stated in the document reproduced in the complaint, **DAVID MUINO SUAREZ** did not even present the aforementioned agency "*for reasons of confidentiality*". It should also be noted that it economically to the accused and the bank itself the opening of these bank accounts and the transit of

millionaire values agreed in this criminal business, with genuine deliberate blindness (*Ostrich Instruction*) from both the accused and the bank itself regarding these illicit operations.

According to the transaction clarification document formulated by **DAVID MUINO SUAREZ**, the defendant participated in several meetings in March and April 2011 related to the opening of the

banking relationship with these companies. As reproduced in the complaint, in the field "*asset outflow clarification* ", it appears that the amounts received by CBH from PETROBRAS "*will be*

distributed to the holding company (LUSITANIA) and other counterparties " based on existing contracts, among them **ACONA**.

Furthermore, it is stated in such document that all questions and doubts about such transfers should be dealt with with the reported **DAVID MUINO SUAREZ** or with JAN

HÄNGGI, your replacement. This central position of the accused in the scheme is also corroborated by the letter of “*Instructions for Bank Transfers*” sent by IDALÉCIO DE OLIVEIRA to the BSI bank, **namely** in the care of **DAVID MUINO SUAREZ**, who makes reference expressed at a meeting held at the bank in Zurich on 30 March 2011.

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This “*Bank Transfer Instructions*” document was also presented to BSI bank *compliance* to justify the transfer of amounts, with a handwritten note that these transfers were “*confirmed by phone*” by **DAVID MUINO SUAREZ** with the client on May 3, 2011.

In addition, the *compliance* documentation of the ACONA account (event 1, annex 15) contains that **DAVID MUINO SUAREZ** was responsible for justifying suspicious transaction alerts on the account, including those with the potential practice of money laundering. Even the As a warning, the *compliance* sector asked **DAVID MUINO SUAREZ** for explanations about the

transaction. In response, the accused justified the bank that the transactions questioned were lawful

(event 1, annex 15, pp. 7/11).

It should be noted that the defendant, as a bank manager, had an obligation to ensure that transactions made by the accounts managed by him were lawful or, if there were signs of illegality (as in the specific case), report immediately to your superiors and the *compliance with* this situation. On the contrary, the defendant, with manifest conscience and will, opted to

cover up the illicit practice of their clients, contributing to the practice of a series of washing crimes

Of money.

At this point, it should be noted that the bank manager must adopt an active conduct of verification of the legality of the transactions, not only requesting information from their own customers, but also seeking, from sources available to him (open or not), information about the companies, people and contracts involved in the operation. The defendant's proactivity was in the sense

conversely, in the sense of making possible the constitution of the *offshores* essential to the concealment stages,

concealment and integration of the fees received by PETROBRAS employees.

The defendant also acted in the operation of amounts received by the account securitized by *offshore* **SANDFIELD CONSULTING**.

According to the complaint, between April 4, 2011 and August 2, 2013, in Brazil and Switzerland, the accused **DAVID MUINO SUAREZ**, consciously and voluntarily, concealed and concealed the nature, origin, location, disposition and movement of USD 4,865,000.00 Americans, arising from crimes of active and passive corruption in the contract for the acquisition of exploration rights to the Benin oil field, Africa, amounts received in the bank account n° Z212669 securitized by *offshore* **SANDFIELD CONSULTING SA** at Banco BSI, agency Zurich, Switzerland. The account has the economic beneficiary PEDRO AUGUSTO CORTÈS XAVIER BASTOS, former employee of the International Board of PETROBRAS. The defendant initially worked with the MOSSACK FONSECA office, requesting the establishment, on 04/04/2011, of *offshore* **SANDFIELD CONSULTING SA**, as verified spreadsheet apprehended at the Brazilian branch of the office (event 1, annex 22), reproduced in complaint.

In this regard, the witness RICARDO HONÓRIO NETO, MOSSACK employee FONSECA in Brazil (event 152, statement 3) confirmed the intense relationship of denounced with the office, as shown below:

Federal Judge: He (*David Muino Suarez*) was a Mossack Fonseca customer here in Brazil then at representation?

Ricardo Honório Neto: Yes. Yes, he was a client.

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This is an answer provided by DAVID MUINO SUAREZ by e-mail, in the German language, whose translation was added to the case file (event 25).

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Federal Judge: He was there several times or only once, can you tell me?

Ricardo Honório Neto: No. It was not a single time. I believe that 02 or 03 times.

Federal Judge: And as I understand it, he was going to request opening of offshore companies, is that it?

Ricardo Honório Neto: Yes.

After the constitution of the *offshore*, in a continuous act, the defendant used the same way of acting as previous fact, creating bank account No. Z212669 in the name of SANDFIELD CONSULTING in Banco BSI, Zurich branch, Switzerland, whose economic beneficiary was PEDRO AUGUSTO XAVIER BASTOS, former employee of the International Board of PETROBRAS. PEDRO AUGUSTO XAVIER was convicted of passive corruption and money laundering in the records of Penal Action No. 5024879-90.2017.404.7000 for having received, in a hidden and disguised, the amount of USD 4,865,000.00 as undue advantage to the lobbyist and operator

financial institution JOÃO AUGUSTO HENRIQUES, due to his unlawful performance in the PETROBRAS 'acquisition of 50% of the exploration rights in the Benin oil block.

It should be noted that in the immigration flow certificates of the accused (event 1, annexes 24/26)

there is an exit from Brazil (São Paulo, Guarulhos) towards Milan, Italy, on 17/05/2011 (flight JJ8062 / ITA). It was found that his visit to Brazil aimed to deal with opening the account in the name

of the constituted *offshore* .

Just 22 (twenty-two) days after the defendant's arrival in Brazil, the account in the name of SANDFIELD was opened (08/06/2011), according to the documentation of event 1, annex 17.

Past

some days, precisely on 06/21/2011, ACONA payments started (account of JOÃO HENRIQUES), in favor of the account set up in favor of SANDFIELD (PEDRO account AUGUSTO XAVIER).

The same account documentation (event 1, annex 17), shows that the account manager account relationship by SANDFIELD CONSULTING was denounced **DAVID MUINO Sweating**.

The accused admitted that he was aware of the status of PEDRO's civil servant AUGUSTO and also the origin of the values moved in these accounts, originating from the PETROBRAS. However, he stated that under those conditions, previously the outbreak of Operation Lava Jato, there was no knowledge of the illicit schemes implemented in the state-owned.

Notwithstanding the arguments, the illegality of bank transactions guaranteed and operationalized by the accused **DAVID MUINO SUAREZ** was evident even by the flow of PETROBRAS> LUSITANIA> CBH> ACONA> SANDFIELD, the latter of PEDRO AUGUSTO, a fact capable of indicating the criminal nature of the movements, as the money goes out

part of the company and returns, in part, to a civil servant of the company itself. So the argument of ignorance is not credible because the illegality was evident and leapt in the eyes of any

diligent bank manager. It was not about ignorance, but about full knowledge of laundering mechanisms undertaken in financial operations.

In addition to these, the accused also acted in the operationalization of amounts received by the account

securitized by *offshore* **STINGDALE HOLDINGS INC** .

Narrated the complaint that between September 29, 2011 and October 18, 2013, in Brazil and Switzerland, the accused **DAVID MUINO SUAREZ** , consciously and voluntarily, concealed and

concealed the nature, origin, location, disposition and movement of USD 2,812,000.0017 US dollars from active and passive corruption crimes in the acquisition contract

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exploration rights to the Benin, Africa oil field, amounts received in the account bank no. 71055026 securitized by *offshore* STINGDALE HOLDINGS at Banco BSI, branch Zurich.

In the same *modus operandi*, the defendant was responsible for determining the constitution of the *offshore*

and also by the banking relationship of account n° 71055026 held by STINGDALE HOLDINGS INC. at the Zurich branch of the BSI bank, Switzerland, using his position as vice-president of Latin America.

In the documents seized at the Brazilian branch of MOSSACK FONSECA (event 1, annex 12), it was found that the *offshore* STINGDALE HOLDINGS was incorporated in Panama, at the request of

defendant **DAVID MUINO SUAREZ**.

The *offshore* was created on 29/09/2011 (cf. opening documents, event 1, annex 28).

On the following day, 09/30/2011, **DAVID MUINO SUAREZ** was asked to open an account at BSI Bank.

In this sense, it is noted that the economic beneficiaries of this account are JOÃO AUGUSTO REZENDE HENRIQUES and JOSÉ AUGUSTO FERREIRA DOS SANTOS, as well as attorneys-in-fact with an authorized signature for handling the ANANIAS VIEIRA DE account ANDRADE and LUIZ ANTÔNIO RICARDO.

Their opening signatures were collected even before the constitution of the *offshore* and opening an account with Banco BSI. As indicated in the documentation attached to the case file (event 1,

annex 28, page 7), the harvest was carried out on 09/23/2011 in the city of Rio de Janeiro / RJ.

After the constitution of the *offshore* at the request of defendant **DAVID MUINO SUAREZ** and the creation of the

account at Banco BSI, for its interference, the account securitized by STINGDALE received several

payments from the account securitized by ACONA.

As determined by the financial tracking of banking transactions carried out at from the bank account securitized by ACONA INT'L INVESTMENTS (event 1, annex 8), the STINGDALE HOLDINGS received, between 05/25/2012 and 10/18/2013, the numerous amount of USD

2.812 million, all from corruption in the Benin oil field.

Transfers are also recorded by the account statements securitized by

STINGDALE HOLDINGS (event 1, annex 29). The same statements show that this account received contributions from accounts such as PENBUR HOLDINGS LTD, by JOSÉ AUGUSTO FERREIRA

DOS SANTOS (event 1, annexes 30/31), account receiving undue advantages paid by CARIOCA ENGENHARIA for former federal deputy EDUARDO CUNHA related to the FT-FGTS financing in the Porto Maravilha project, in Rio de Janeiro / RJ.

On the other hand, from the breach of the telematic confidentiality of the email anluri33@hotmail.com,

maintained by ANTÔNIO RICARDO LUIZ, attorney for the STINGDALE HOLDINGS account, were

E-mails identified that prove that **DAVID MUINO** actively participated in the management of illicit assets handled by the group, as well as investments made in the account.

In an email dated 12/14/2011 (event 1, annex 32), the denounced **DAVID MUINO SUAREZ**, from the professional email *david.muino@bsibank.com*, replies ANTONIO RICARDO LUIZ, aka “TONINHO”, with copy to ANANIAS VIEIRA DE ANDRADE, the regarding the “*total investment available*” in the **STINGDALE** account, as shown below

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Decreed, at the request of the MPF, in the records of the Request for Breach of Data Secrecy No. 5032183-43.2017.404.7000.

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reproduced:

In another email obtained by the investigation, dated 12/29/2011 (event 1, annex 33), **DAVID MUINO SUAREZ** asks “TONINHO”: “*Everything is in order regarding the operations? Something is missing, can I help you?*”. It should be noted that the majority of operations that had as antecedent crime the corruption in the acquisition of the oil field of Benin were held between the years 2011 and 2012.

On 12/19/2012, **DAVID MUINO SUAREZ** forwarded an email (event 1, annex 34) to ANTONIO RICARDO LUIZ with the subject “I calculate Stingdale”:

Attached to the above transcribed email was sent a document called “*Calculation stingdale*” (event 1, appendix 35), containing spreadsheets that demonstrate contributions of amounts

by DAVID MUINO, JOÃO HENRIQUES (ACONA), JOSÉ AUGUSTO FERREIRA DOS SANTOS (PENBUR) and ANANIAS VIEIRA DE ANDRADE, which indicates that **STINGDALE** was

used for joint investments made by all those investigated.

As seen, more than just managing the account, there is evidence that **DAVID MUINO SUAREZ** also made contributions to **STINGDALE HOLDINGS**, specifically USD 100,000.00 on 04/26/2012, with profits from this operation. In effect, in the account statements **STINGDALE** (event 1, annex 29, p. 16), includes an investment of USD 99,970.00 made in 04/23/2012 from the account of VIVIANE CARVALHO RAZZE, current wife of the accused, the investment mentioned is flat.

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Such assets were mixed with the illicit amounts deposited by JOÃO HENRIQUES in the account, so that the accused obtained undue profits and income from the aforementioned investment. This mix of licit and illicit assets, especially in investments that give the greater the return the greater the amount invested, conferred criminal benefit on the defendant and his comparsas.

In the e-mails obtained in the investigation, there is also reference to the concealment of evidence by

DAVID MUINO SUAREZ and ANTONIO RICARDO LUIZ, as the email dated 02/15/2012 (event 1, annex 36), in which the defendant states that he informed Banco BSI's *trading desk* to do not send e-mail to PETROBRAS address:

That said, it is evident that the defendant had knowledge of the nature of the capital of the PETROBRAS, as a publicly traded company, whose majority shareholder is the Government of Brazil, being, therefore, a state company of mixed economy. The defendant's and witness ANTONIO RICARDO LUIZ - who, like DAVID MUINO, also made a profit from this criminal enterprise - do not denature the evidence of illegality of the evidence above.

As the procedural instruction demonstrated, **DAVID MUINO SUARES** through the Panamanian office MOSSACK FONSECA brokered the formation of several *offshore companies*.

This office was involved in several criminal schemes around the world.

It should be noted that the accused **DAVID MUINO SUAREZ** was one of the biggest clients of the MOSSACK FONSECA office in Brazil, according to the e-mail obtained in the Breach of Data Confidential No. 5044444-11.2015.404.7000, forwarded by RENATA PEREIRA for MARIA MERCEDES QUIJANO, reproduced in Information n ° 161/2015-GT / LAVAJATO (event 1, annex 40).

According to a statement by **DAVID MUINO SUAREZ**, his role consisted of a kind of “middle field” of the clients towards the law firm, let's see excerpt of the interrogation transcript (event 277, video 03).

Federal Public Ministry: Fair. Now I would like to understand your participation in the constitution of *offshore* along the Mossack Fonseca. What was your role in this intermediation?

Federal Judge: Just to make it better outlined, can you clarify about Mossack Fonseca? What did he do? Who was?

David Muino Suarez: Mossack Fonseca was a company, that of the Panama Papers, it was a company, a super well-known, highly renowned, prestigious law firm, was one of the largest in the world, okay?

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And their services are the constitution of companies, the constitution of vehicles for succession planning, for foundations, there are several things they do, or did, I don't even know if it exists today. What I did was the midfield. His Excellency needs to understand that customers didn't know, didn't have knowledge of how to set up a PJ, a legal entity, an *International Business Company*, then I just, what I did was the midfield, I would send an email or call Mossack Fonseca to put in contact with the client, or already said such client would like a PJ from Panama, *TBBI*. And then them, what Mossack Fonseca's office here in Brazil did was also a certain type of midfield also with the Panama office because everything was done through the Panama office and the Panama then sent all the necessary documents by post to Switzerland, to Banco BSI, okay? AND only my participation in that was the midfield and then as I did that midfield, it was that's why those 200, 300 dollars per company a year that I collected as a *spread*.

In this sense, it is noted that the accused's performance implied a kind of consultancy for its clients in setting up foreign companies. There is even proof that the defendant made a profit from his OAKLAND MANAGEMENT account through this intermediation. However,

According to the testimony of several defense witnesses who worked at the BSI bank, this practice was not common.

Caroline Gerster-Wick, employee of the *Compliance* Department at BSI Zurich reports that it is not common to provide consultancy for setting up foreign companies (event 2234, annex 10, page 7)

Thomas Retsch, BSI Zurich *compliance officer*, says such a practice would be unusual. (event 234 - annex 14, page 8)

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Samuel Notz, former head of **DAVID MUINO SUAREZ** in relation to the team responsible for account of Latam Zurich at BSI, declares that this activity was performed by external specialists, as lawyers (event 234 - annex 15, page 9).

Walter Fröhlich, Brazilian account manager at BSI says that such service provision not common (event 234 - annex 18, page 8)

Based on the above, it is clear that **DAVID MUINO SUAREZ** acted contrary Banco BSI guidelines, since several employees of the Institution stated that the conduct performed by the accused, related to the provision of consultancy services to clients foreign companies were not common within the institution.

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In this step, it is noted that **DAVID MUINO SUAREZ**, as a bank manager, had a duty to ensure that the outcome of the money laundering crime was not achieved, as recommended by art. 13, § 2, of the Penal Code. However, even though he had science and control

regarding the specific risks of money laundering, it did not take the necessary precautions to prevent its occurrence.

More than that, in addition to the omissions to the duty of guarantor imposed on the applicant, there is ample evidence that **DAVID MUINO SUAREZ** actually performed money laundering commissars.

Whereas the accused participated in meetings between those involved in the scheme, established *offshores* and opened bank accounts, including in Brazil, operated payment, justified suspicious transaction alerts and practiced other behaviors in order to conceal and hide the criminal origin of the values moved.

Thus, there is no doubt that **DAVID MUINO SUAREZ** acted in a consciously, in order to conceal and conceal the proceeds of crime against the Administration in accounts

responsibility to BSI.

All circumstances were known to **DAVID MUINO SUAREZ**, who chose for omitting its duty to guarantee the lawful functioning of the financial system, as well as to its power to prevent the crime result of money laundering, in addition to carrying out acts money laundering commissars.

In addition, it should be noted that **DAVID MUINO SUAREZ** lacked the truth before the Federal Public Ministry when heard in the preliminary phase, since at that time claimed to be unaware of the ownership of the **OAKLAND MANAGEMENT** account (event 1, annex 14),

let's see:

It happens that, documents sent by the authorities of the Principality of Liechtenstein show that **OAKLAND MANAGEMENT** (account No. 50.378.349) actually has its own **DAVID MUINO SUAREZ** as one of his economic beneficiaries (event 196, annexes 7/8) Now, the accused's falsehood is so evident that he retracted himself during the interrogation, in this sense, let's see an excerpt from the interrogation transcript (event 277, video 02 and 03):

Federal Judge: You were heard in statements on 12/06/2017, at the Federal Police, before the Attorney of the Republic, I ask you if you confirm these statements or if you have any rectification that want to do?

David Muino Suares: I would like to make a correction.

Federal Judge: Can you do, what would be the rectification?

David Muino Suares : At the time of my statement, I said that the account, such an Oakland account it didn't belong to me, I apologize for having wrongly clarified this fact, or I don't know if I went so badly interpreted by the Prosecutor at this time, because I explained the purpose of this account, from Oakland. But at the time I had arrived here in Brazil with the best intentions, I was stuck, I was away from my family, it was a very high pressure, a very high nervousness at that time, I got confused, there are

company accounts with very similar names, called Ochild, Okfield ... so at that time I just

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I got confused, but the Oakland account that was mentioned, for which I was questioned was mine ownership at that time

Federal Judge: Apart from this rectification, do you have any more, regarding these statements?

David Muino Suarez: I don't remember, I don't think so, I don't have the complaint here, I wouldn't like to do it no further rectification.

Federal Judge: With the word Public Ministry

Public Prosecutor's Office: I refer to this statement at event 01, annex 14. Precisely, you he had said that he does not remember who belonged to Oakland. Now you have retracted yourself, so I'll move on to

next question right. The Oakland account the Lord had together with his brother is that it?

Defense: Excellence, just a matter of order, this Oakland issue is not part of the complaint, it is not an object of the complaint, although it was included in the case records, it was part of the moment of the declaration with the police

Federal, but is not part of the complaint.

Public Ministry: Excellency the importance of questions ...

Defense: I just didn't finish Doctor, just a minute. Although it is not part of the complaint, I imagine it is David Muino's interest in explaining the whole situation, but just for the record, which is not part of the object of complaint, then feel free to respond.

Federal Judge: Perfect, perfect, so it is registered and it is registered as I anticipated at the beginning that it does not

you need to answer any questions that are asked, if you want.

Defense: He does it in good faith, Excellency, thank you very much.

Federal Public Ministry : The line of questions, Excellency, is precisely to ascertain the real truth here in relation to deceit, whether there is deceit or not in relation to what is said in the complaint, that's why I follow Regarding the question, I don't know if you would like to answer, what was the nature of that Oakland account then that you kept at Banco Vaduz in Liechtenstein?

David Muino Suarez: It was at Banco VP, in Liechtenstein, yes sir. It was an account for personal investments, investment, it was an account like you should have a personal account where you do investments, the same thing that I decided to have this account.

Federal Public Ministry: When did you open this account, do you remember?

David Muino Suarez: I don't remember exactly.

Federal Public Ministry: Do you remember what the origin of the values that transited in this account was?

David Muino Suarez : Could you repeat that?

Federal Public Ministry: What is the origin of the values that transited in this account? The origin of the values, who deposited in your account?

David Muino Suarez: The origins? Where did it come from? It was activity

Federal Public Ministry: Where did the money come from, that's it.

David Muino Suarez: It was activity, from my activity as a banker, there was, I was in this At that time, I have a football coach diploma in Switzerland, I received tickets, a lot of tickets from my activity, I did, as they say, did education for children with a coach's degree, received values with certain frequency in this account, but also my activity as a manager, as an economist, I had some activities that later received entries in that account.

Federal Public Ministry: Are these activities that you say extra-bank? They are unrelated to your

performance in the bank? At BSI.

Federal Judge: Well, it was registered that part of the amounts were due to his activity in the bank, it is that?

Federal Public Ministry: Yes, that's what I want to clarify, thank you.

David Muino Suarez : Certain values, yes, but purely for consultancy, were inputs from perhaps a fund that was advised, I remember that there must be entries from that Prestigie, who entered there, a fund called Prestigie, then it was due to this activity, but at no time did I receive the facts that occurred in the report, or mentioned in the report, I never received any amount from this account.

Federal Public Ministry: I register here Excellency, event 196, annex 09, which is exactly the result of COPIN, I believe that Defense has already had access to it, page 250. Just a first example, I would like to hear from you, you received \$ 3,175 from the Sandfield account that you mentioned yourself, received from the convicted Pedro Augusto Cortes Xavier Bastos, what is the nature of this deposit, you know me explain?

David Muino Suarez: Could you see? Take a look?

Federal Judge: Can you repeat? 196, attachment?

Federal Public Ministry: Sorry, I recorded the recording, 196, attachment 09, page 250, onwards, you know, and there are other values there too, we can ...

David Muino Suarez: Could you just repeat the question, what is your question?

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Federal Public Ministry: What is the nature of this deposit? You would have received from Mr. Pedro Xavier Bastos?

David Muino Suarez: There are several, not only ...

Federal Public Ministry: Not only from Sandfield, I will follow received 3,880 dollars from Stingdale, which belonged to João Augusto Rezende Henriques, in July 2012 the You received \$ 1,400 from Sandfield in October 2012, \$ 1,400 from Acona Investments, in December 2012, \$ 1,400 from Stingdale, and here comes the larger amount, already in sequence, for the dates as it is chronological, July 2013 the value of \$ 167,364 57 cents from Stingdale Holdings. Well, there are several deposits, are sometimes deposits with approximate values, would you be able to explain to us the nature of these deposits?

David Muino Suarez: Yes, sir, I have. These companies that in the complaint are called *offshores*, *offshore*, I would like to explain, *offshore* what it means, translated, outside the border, which are companies outside the country, were companies that we called the *International Business Company*, that were international companies that customers used to be the account holders. These companies have the smaller values, of 1,500, that of 3,000 and a little, were values that the customers who paid the annuities for me after I did the midfield, all of that midfield, introducing customers to Mossack Fonseca, okay? It was later, these amounts were paid to me and as the Attorney General must have seen, then he also had regular payments to a Mossack Fonseca account in Panama. Me collected these values, not only from the customers mentioned in the complaint, collected these values and made two or three annual transfers, okay? So I collected it, I took it from the midfield, from the service I had done, I can even say that I charged a *spread* normally of about 200, at most 300 dollars, left here, and sent, collected that amount and sent it to Mossack Fonseca's account. This about values minors. The larger amount can be explained very easily, I made an investment in Stingdale, worth 100,000, that amount here was my profit, it was sent. I decided at that time, it must have been, like that was? 18 of ...

Federal Judge: July 2013.

David Muino Suarez: July 2013. End of 2013, this is nowhere, end of 2013 concluded the construction of my family's house in Switzerland, so I needed that amount, that's why I did the divestment, the sale of the stake I had made with Antonio Luiz Ricardo in Stingdale. As I had mentioned, Antonio Luiz Ricardo was a very capable manager, I made a profit of 67,000, I invested 100,000, 167,000, that's why I received this amount in this account, it didn't go back to my wife. In fact, the

payment that was made in favor of Stingdale was made on my wife's account because at that time the my bills, I don't even remember Oakland, I had no liquidity or other plans, or money was invested, that's why we used my wife's account at that time and then ... But the bank in I was always aware that it was my wife, this is recorded when the contract is made, when if you enter the bank it is registered that she is my wife, of course, even we all know each other other. And after that, the biggest value of 167 that arrived in Oakland from Stingdale was the sale of my participation in Stingdale.

Federal Public Ministry: Okay. In fact, there are other small transfers, it is not worth mentioning here right, but there's one last one I'd like to ask. January 28, 2015 the value of 77,000 of Lusitania Petroleum, which is related to Idalécio de Castro, could you justify this deposit? January 28 2015.

David Muino Suarez: I don't remember what that transaction was.

Federal Public Ministry: No problem. So it was customary at BSI for managers, the vice president for matters, right, finally, business managers, receive fis (*rectius* , *fees*), as you said a *spread* in regarding intermediation operations carried out in the context of the relationship with the bank?

David Muino Suarez: I won't say it was common, but I knew at least two more who did this.

Federal Public Prosecutor's Office: And the bank knew of your receipt, I will not say from the outside right, but ...

David Muino Suarez: My superior, Samuel Notz knew, until some companies that are on the table The complaint was that he asked me to do the midfield with Mossack Fonseca, yes sir.

As provided in the documentation (event 196, annex 09, pages 250 and ss), the accused received onlending of securitized accounts in these notices, the performance of which took place in the constitution of the *offshore* and

creation of securitized accounts, mentioning, as an example, receipt of USD 3,175.00 in the SANDFIELD account, USD 3,880.00 from STINGDALE account (04/01/2012), USD 1,400.00 from

account held by SANDFIELD (July / 2012), USD 1,400.00 from the account held by SANDFIELD

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ACONA INVESTMENTS (October / 2012), USD 1,400.00 from the account held by STINGDALE

(December / 2012), USD 167,364.57 of the account held by STINGDALE (July / 2013), in addition to

USD 77,000.00 from Lusitania Petroleum (01/28/2015).

Providing interrogation, the accused did not know how to justify the origin of the values. Says, as for the "lower values", these "*were values that the customers who paid the annuities for me after I did the midfield, all of that midfield, the introduction of the clients to the*

Mossack Fonseca, okay? ". With regard to the "highest value", he justified that " *an investment in*

Stingdale, worth 100,000, that amount here was my profit, it was sent ". Second stated, he needed the amount to complete his home in Switzerland, motivating the divestment / sale of interest in the account. Finally, regarding the amount received by LUSITANIA in 2015, was unable to inform the origin.

It remains clear that the receipts were the consideration for the operationalization held by the defendant. He admits that this is a consideration for the "midfield" performed. Effectively, these are advantages received by the performance in money laundering, constituting the

ACONA INT'L INVESTMENTS, SANDFIELD CONSULTING and STINGDALE accounts HOLDINGS, through its influence with MOSSACK FONSECA, in addition to the opening of accounts n ° Z203217, n ° Z212669AA and n ° 71055026, taking advantage of its position in the BSI Bank, in addition to

direct action on transfers, contact with those convicted of previous crimes, such as concealment to the Swiss bank's *compliance* sector .

Accordingly, there is no doubt that the defendant, **DAVID MUINO SUAREZ** , using his Swiss bank BSI, acted consciously and voluntarily in the practice of laundering crimes Of money.

4. DEVICE

In view of the above, **DAVID MUINO SUAREZ** must be condemned as an crime of money laundering, capitulated in article 1, *caput* , c / c § 4 of Law n ° 9.613 / 98, by 3 (three) times, in a material contest (art. 69), in the form of art. 29 of the Penal Code.

5. DOSIMETRY

Against **DAVID MUINO SUAREZ** there are several fundamentals that must be considered as seriously negative the vector of **guilt** . First, the accused was Manager Bank of the BSI Bank, in Switzerland, a position of high responsibility, which gave him the special duty

to ensure that the outcome of the money laundering crime is not achieved.

It turns out that, even though he had science and control when it came to the concrete risks of money

the defendant did not take the necessary precautions to prevent its occurrence, on the contrary, there

abundant evidence that the accused actually committed money laundering

those that involved a significant amount of money.

It is also noted that the defendant has a high degree of education and discernment, considering responsibility for his position, which demands greater censorship in the application of the sentence.

Still, in relation to **social conduct** , it is already known of the defendant's unfavorable performance,

considering the fact that when complying with precautionary electronic monitoring measures,

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he would have been involved in conflict with his wife VIVIANE MUINO, so he came to suffer representation for domestic violence, threat, injury and minor bodily injury.³

The **circumstances** of the crime are also unfavorable, since the accused has crime of money laundering in a professional manner and through complex expedients.

The **consequences** of crimes are most damaging, given the damage caused to PETROBRAS, which directly or indirectly affect the Public Administration.

In addition, it remained clear that **DAVID MUINO SUAREZ** benefited from receipt of amounts arising from the crime of money laundering, so that it should apply to **aggravating factor provided for in item IV of art. 62.**

Finally, the **special causes of the increase in sentence** provided for in articles 333, sole paragraph, of the CP and 1, § 4, of Law 9,613 / 98, since the crime of money laundering

money was practiced repeatedly 3 (three) times.

6. FINAL REQUIREMENTS

For all the above, the **FEDERAL PUBLIC MINISTRY** strives for total of the request for condemnation of the initial accusation, so that **DAVID MUINO SUAREZ** is incurred in the penalties provided for the crime of money laundering, capitulated in article 1, caput, c / c § 4

of Law No. 9,613 / 98, 3 (three) times, in a material contest (art. 69), in the form of art. 29 of the Code Penal.

In addition, it reiterates requests for arbitration for the minimum amount of damages caused by the infraction, based on art. 387, caput and IV, CPP, in the amount of R \$ 21,750,000.00,

corresponding to the value of undue benefits paid; as well as the confiscation of values identified as products of the crimes reported up to the limit of R \$ 21,750,000.00.

Curitiba, November 28, 2019.

Deltan Martinazzo Dallagnol

Attorney of the Republic

Januário Paludo

Regional Attorney of the Republic

Antonio Carlos Welter

Regional Attorney of the Republic

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